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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARK NUNEZ, *et al.*

4 Plaintiffs,

5 v.

11 Civ. 5845 (LTS)

6 CITY OF NEW YORK, *et al.*

7 Defendants.

Conference

8 -----x

New York, N.Y.
April 27, 2023
2:00 p.m.

9
10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 Chief Judge

13
14 APPEARANCES

15
16
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Also Present: Christina Bucci Vanderveer
Associate Deputy Monitor

Alycia M. Karlovich
Monitoring Team Analyst

Dennis Gonzalez
Monitoring Team Associate Director

Commissioner Louis Molina
New York City Department of Correction

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(Case called; appearances noted)

THE COURT: Good afternoon, and greetings to everyone in attendance today and everyone in the overflow courtroom.

We are here today for a status conference. This conference was scheduled to discuss the city and the Department of Correction's implementation of the action plan that was approved and entered by the Court on June 14, 2022 -- that's at Dkt. entry No. 465 for those who are looking up the documents on PACER -- and this includes whether meaningful progress has been made in achieving the reforms set forth in the action plan or whether additional remedial relief is warranted at this juncture.

I remind everyone here that, as provided in the Court's January 19, 2021, standing order, filed in Dkt. No. 21 MC 45, neither recording nor any retransmission of any part of the proceeding is permitted. And all who have been permitted to keep electronic devices here must keep those devices on silent and are not to use them for communications without permission from me. And again, no photography, no recording, no retransmission.

Today's conference, as I said, was scheduled to assess the city and the department's progress in implementing meaningful reform at Rikers. I'll begin with an overview of my own observations regarding the current status of the case and key issues of concern.

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1 This case, from its inception in 2011, has been
2 focused on the Department of Correction's pattern of using
3 unnecessary and excessive force against incarcerated
4 individuals and detained individuals. The parties stipulated
5 to a settlement, known as the consent judgment, in 2015, which
6 set forth the concrete reforms that the department is required
7 to effectuate in order to remedy the practice of staff violence
8 against individuals in custody and to ensure the safety and
9 well-being of individuals in custody.

10 The monitoring team, which the Court appointed
11 pursuant to the consent judgment to assess the compliance in
12 implementing the reforms set forth in the 2015 consent
13 judgment, has submitted periodic and comprehensive reports over
14 the past eight years. The monitoring team has also provided
15 expertise and consultant resources to assist the defendants in
16 identifying and addressing impediments to progress. As time
17 has progressed, it has become evident to the monitoring team
18 that the department lacks the foundational good practices that
19 are critical to implementation of the provisions of the consent
20 judgment and to the creation of a safe environment for detained
21 persons and staff at Rikers. To put it bluntly, the monitoring
22 team has reported that the consent judgment presupposed a
23 foundational level of good correctional practices that did not,
24 in fact, exist.

25 To prioritize the key foundational issues at the core

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1 of the department's mismanagement of the jails, the department,
2 the monitoring team and the other parties to this case have
3 made a marked shift in focus over the past year. In June 2022,
4 defendants and the monitoring team submitted an action plan,
5 which was approved by the Court, and set forth concrete reforms
6 to be implemented immediately in order to build a foundation
7 upon which meaningful reform and compliance with court orders
8 can be achieved.

9 At this point, it has been about ten months since the
10 Court approved the action plan. The Court last convened in
11 November 2022 to assess the department's progress in
12 implementing the reforms set forth in the action plan. Since
13 then, the Court has watched the reports of conditions at Rikers
14 closely, received and reviewed three status reports from the
15 monitoring team and met with the monitoring team to keep
16 abreast of developments. The Court has also received and
17 reviewed the parties' briefings and status updates on
18 conditions related to intake at Rikers, which was the subject
19 of recent contempt motion practice by the parties. The Court
20 has likewise received and reviewed the parties' April 25, 2023,
21 submissions on the current conditions at Rikers and proposed
22 next steps.

23 Today's conference represents an opportunity to
24 examine closely the areas in which improvements have been made
25 and those in which reform has stalled. The monitoring team's

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1 April 3 and April 24, 2023, status reports provided an updated
2 account on the conditions at Rikers and relate that the
3 department is in what they characterize as a state of flux as
4 it attempts to implement reforms across a wide spectrum of
5 areas. The conditions remain deeply disturbing.

6 The April 3 report shows that high rates of force
7 incidents continue. There has been an exorbitant increase in
8 the number of stabbings and slashings over the past two years.
9 The department's emergency services unit has continued to use
10 problematical practices that catalyze rather than de-escalate
11 security incidents, and the monitoring team has reported that
12 there has been, since the summer of 2022, a discernible
13 deterioration in the quality of investigations conducted by the
14 investigations division, which plays a critical role in
15 fostering accountability for use-of-force violations.

16 The Court was encouraged to learn from the most recent
17 monitoring reports that the monitoring team has observed that
18 the department has taken important initial steps in building
19 each area of the desperately needed foundation from which
20 meaningful reform can be achieved. Reforms made in certain
21 areas subject to the action plan, including staffing,
22 conditions in intake and disciplinary processes, have given the
23 monitoring team a reported sense of cautious optimism that
24 progress is being made, and real change has occurred, according
25 to the team, since the action plan refocused the department on

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1 the core issues underlying its mismanagement of the jails. In
2 its April status reports, the monitoring team set forth several
3 recommendations that the team reported are critical to
4 improving conditions at Rikers and working toward compliance
5 with court orders.

6 At today's conference, the Court looks forward to
7 learning more about the city's and the department's
8 implementation of the action plan, including whether sufficient
9 meaningful progress has been made or whether further remedial
10 relief is necessary. The Court also expects to hear each
11 party's views on the monitoring team's recommendations from the
12 April status reports and whether those recommendations present
13 viable solutions to implementing wide-scale reform and
14 achieving compliance with court orders. As we all know, broad
15 reform is needed, and that is why a clear path forward,
16 including the prioritization of certain issues, is necessary
17 for purposes of both focus and efficiency.

18 I will turn shortly to the monitoring team and the
19 parties for their views on the lessons learned since we last
20 met in November 2022, the areas of focus that should be
21 prioritized to ensure better protection from violence of those
22 in custody at Rikers and the parties' views on concrete next
23 steps. I will be particularly interested to hear the
24 defendants' assessment of the reasons for the deterioration of
25 investigative division performance and why there appears to

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1 have been a substantial delay in responding to the monitoring
2 team's alerts concerning the problem. I'm also eager to learn
3 how defendants intend to address the persistent and
4 longstanding excessive use of force by the ESU, the emergency
5 unit.

6 Now I will call on the parties for their opening
7 status reports, and then we'll circle back later with questions
8 and further in-depth discussion, as needed. We'll begin with
9 the monitor and the deputy monitor.

10 MR. MARTIN: Thank you.

11 THE COURT: You can all speak from your seats instead
12 of standing and leaning. I will take that audibility
13 concession as deep respect for the Court and everyone in
14 attendance here.

15 MR. MARTIN: Thank you, your Honor.

16 Your Honor, I would seek the Court's --

17 THE COURT: If you would move that microphone even
18 closer to you.

19 MR. MARTIN: Oh, OK.

20 THE COURT: Yes. Great.

21 MR. MARTIN: Your Honor, I would seek the Court's
22 indulgence to take a few very brief moments to render two
23 thanks you that I believe are appropriate for this hearing.

24 May I do that?

25 THE COURT: Yes.

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1 MR. MARTIN: Simply, the monitoring team in preparing
2 and assembling the materials for both the April 3 report and
3 the April 25 report did so under fairly demanding time lines
4 and responsibility and, I believe, rendered a valuable work
5 product that will aid the Court and the parties, and I wanted
6 to simply say thank you to my team.

7 THE COURT: The Court thanks the team as well.

8 MR. MARTIN: Secondly, Christina Vanderveer, who is
9 the associate deputy monitor, has given seven years of sterling
10 service by our office, and she leaves tomorrow. She will be
11 sorely missed, as she has tremendous skills and knowledge
12 developed over the seven years.

13 And we wish you very, very well and much success as
14 you move on to the other endeavors.

15 THE COURT: Thank you so much for your work over these
16 years, Ms. Vanderveer. We've all benefitted from your work.
17 It has been a pleasure to be in communication with you, and I
18 wish you the best as you move on.

19 MR. MARTIN: Thanks for allowing me that.

20 Now, the matters at hand.

21 Your Honor, the conclusion of the April 3 report
22 includes the following observation: "Parts of the report
23 support cautious optimism that progress is being made, but
24 others provide ample cause for continuing concern about the
25 current state of affairs. Both reactions are justified and

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1 reflect the anticipated pace of reform."

2 Having reviewed the conclusion in preparation for the
3 hearing, I was struck by that sentence in the sense that it put
4 me in mind of the great 19th century novel by Charles Dickens,
5 A Tale of Two Cities, which some of you may or may not know
6 started with these two sentences: "It was the best of times"
7 and "It was the worst of times."

8 The April 3 report sets out both progress and setbacks
9 for the June to December 2022 time period. Our most recent
10 status report of April 24 sets out the remedial steps taken and
11 steps not yet taken between April 3 and April 24. The
12 defendants will, of course, focus on progress made, while the
13 plaintiffs and the Southern District of New York will
14 understandably focus on the setbacks, seeking further
15 remediation on a variety of issues.

16 Our reports, I believe, have been rendered in a
17 neutral fashion and provide detailed observations that credits
18 the progress made and just as properly identifies areas in
19 which progress is lacking and/or retarded. The reports provide
20 the Court and the parties a record upon which a future course
21 of action may be considered and determined. My deputy monitor
22 and I stand ready to answer questions the Court may have as to
23 the matters that need further clarification or discussion. The
24 deputy monitor, at the appropriate time, will speak to the
25 recommendations that is later in the agenda, but she will take

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1 that charge. And I believe, just so the Court is fully up to
2 date, literally, the deputy monitor and I spent yesterday on
3 site and at the Bulova headquarters.

4 The on-site work, we visited GRVC, the ESH housing
5 units, and made observations on how that unit, housing unit is
6 being been administered and operated and observed one of the
7 30-day hearings for one of the residents there and also had the
8 opportunity to interact with quite a number of residents. I
9 personally interviewed as many as I could, both out of cell and
10 in cell, and learned a great deal. And there's more, of
11 course, to be learned, because it's still ongoing, but that was
12 very worthwhile time spent.

13 We then went over to Rose M. Singer, where they are
14 engaged in a retrofitting construction project, which will
15 accommodate the ESH program once that construction is
16 completed, and I was given a thorough tour of that facility.
17 And it's pretty far along, to where I was able to understand
18 the configuration, the layout, security features, etc. So that
19 was time very well spent.

20 We then returned to the headquarters, and the
21 commissioner had made available three of the new assistant
22 commissioners/wardens for us to meet, which we had not met. We
23 were given ample time just for an initial visit and hear a
24 little bit about where they're going to work, when they
25 started, their properties, etc. That was, again, very helpful

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1 to lay eyes on those key positions and to establish contact,
2 where we can reach out and they reach out to us.

3 Thereafter, the commissioner had assembled virtually
4 his entire executive staff to review with us their assessments
5 on the recommendations and their intended progress and intended
6 actions taken and progress to be made. It was a very good
7 back-and-forth, where we were certainly allowed to ask
8 questions, and various executives responded appropriately in
9 kind. The commissioner may -- obviously I'll leave it to
10 him -- want to reference that meeting and add obviously
11 whatever he should choose, but it was a very productive
12 meeting.

13 We then met with two of the top officials in the
14 investigation division, because we had already had some working
15 sessions with them post the April 3 report on addressing the
16 investigative issues. So since those issues had already been
17 placed in the works, that was simply to see, get more update on
18 that progress that they had made since our last meeting and to
19 engage in some discussion on a particular issue that's going to
20 be difficult and the parties are very interested in; and that
21 is the issue of returning to investigations that occurred in
22 the June to December period and likely extended to March as to
23 whether those incidents need to be revisited and possibly
24 reinvestigated. Very, very difficult issue, going to result in
25 some very time-consuming, demanding work, so we're trying to be

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1 extremely careful and develop a structure and criteria for
2 which of those cases need to be revisited. So that, again, was
3 an important meeting that is ongoing and will be attending to
4 with the agency officials.

5 I believe that brings you up to date as to our
6 activities and our observations on these most recent --

7 THE COURT: Just keep your voice up.

8 MR. MARTIN: Our most recent work yesterday.

9 Unless your Honor has any immediate questions, that's
10 pretty much all I had to say at this point.

11 THE COURT: Thank you, Mr. Martin. I have no further
12 questions for this opening round.

13 MR. MARTIN: Thank you, your Honor.

14 THE COURT: I'll turn now to counsel for the city of
15 New York.

16 MR. SCHEINER: Good afternoon, your Honor.

17 THE COURT: Good afternoon.

18 MR. SCHEINER: I'm Alan Scheiner of the New York City
19 Law Department. To my left is Sheryl Neufeld, also from the
20 Law Department. And to her left is Commissioner Louis Molina,
21 who will address the Court after my remarks.

22 The city, the department and Commissioner Molina are
23 deeply committed to the core mission of this proceeding, which
24 is to enhance the safety and security of all the people
25 committed by the courts to the city's custody as well as the

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1 safety of the department's staff and the public at large. It
2 is that mission that brings us all here today.

3 Correctional work is among the most difficult and
4 dangerous in government. As I believe the monitor's report
5 shows, to achieve the paramount goal of safety, the department
6 must wrestle with nuanced and complex issues, so undoubtedly, a
7 lot more work remains to be done to achieve our mission. The
8 department's new and growing leadership is doing it and making
9 rapid progress.

10 The department carefully considers all of the concerns
11 and data presented by the monitor's thorough and painstaking
12 work and is thankful for the monitor's help in achieving our
13 shared goals. Under Commissioner Molina's leadership, the
14 department has worked hand in hand with the monitoring team to
15 track results and resolve problems. The evidence shows that
16 this team effort has produced objective, measurable and
17 striking success. The department's overall rate of use of
18 force has declined from 12.1 per 100 persons in June 2022 to
19 9.2 per 100 in March 2023. Use-of-force incidents declined by
20 over 1,000 from 2021 to 2022. The percentage of use-of-force
21 incidents resulting in no injuries increased from 63 percent in
22 2016 to 83 percent in 2022: The commissioner's
23 violence-reduction plan at RNDC, which houses our youngest
24 custodial population, resulted in a decline from 24 stabbings
25 or slashings in March 2022 to only five in March 2023. In that

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1 same facility, uses of force declined by 27 percent, from 111
2 in March 2022 to only 81 in March 2023.

3 As you know, GRVC is the facility most troubled by
4 violence, and its residents present the highest security risks
5 of the department's custodial population. Comparing October
6 2022 to March 2023, slashings and stabbings at GRVC are down by
7 70.8 percent, and use-of-force incidents are down by 63.7
8 percent. Unfortunately, 2021 and 2022 showed an increase in
9 overall slashings and stabbings compared to 2020, but as the
10 monitor noted, under the department's new team, those incidents
11 have declined in the latter half of 2022 and even more so in
12 2023. For example, there were 50 such incidents in January
13 2022 but only 32 in March 2023.

14 Of course, this is only some of the positive results
15 we've seen, and it's only the beginning of even more striking
16 improvements, but these objective facts demonstrate that the
17 department's new leadership team, working in tandem with the
18 monitor, is getting the work done. As the monitor notes, the
19 department has made sweeping improvements in staffing, which is
20 vital to improving safety -- a 99 percent decrease in unstaffed
21 posts, comparing the period of July to December 2021 to the
22 same period in 2022; a 78 percent decrease in staff working
23 triple shifts, comparing the same two periods.

24 THE COURT: Could I just ask you, did you say that the
25 periods being compared are July of 2021 and July of 2022, or is

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1 there -- what is the end point?

2 MR. SCHEINER: No, your Honor. It's a several-month
3 period, so the period is July to December, and that's in 2021
4 compared to the same period in 2022.

5 THE COURT: Thank you.

6 MR. SCHEINER: And that was a 99 percent decrease in
7 unstaffed posts.

8 THE COURT: So you're comparing two six-month periods.

9 MR. SCHEINER: Yes, your Honor. Is it six or eight
10 months?

11 It's six months, yes.

12 THE COURT: July to December.

13 MR. SCHEINER: Yes.

14 THE COURT: Thank you.

15 MR. SCHEINER: Yes.

16 So that was a 99 percent decrease in unstaffed posts,
17 and the daily average sick leave percentage has declined from
18 26.1 percent in January 2022 to 9.5 percent in March 2023.

19 The monitor has correctly lauded the achievements of
20 the department's new deputy commissioner for administration,
21 just hired in September 2022, noting that he is the, quote,
22 driving force behind the many improvements in staffing. The
23 department has stepped up its supervisory hiring both through
24 internal promotions and external recruiting of new talents.
25 The monitor specifically noted the success of four new deputy

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1 commissioners -- first, the DC for classification, custody
2 management and facility operations; second, deputy commissioner
3 for administration; third, the deputy commission for security;
4 and fourth, the deputy commissioner for training and
5 development -- as well as two new associate commissioners of
6 operations.

7 Since January 2022, more than 40 professionals were
8 recruited as new additions to the department, and while the
9 department has made strides in external recruiting, to be
10 clear, the department has a strong pipeline of talented leaders
11 within its existing rank, and it is its priority to retain,
12 train and develop those individuals. Last month, the
13 department promoted 26 officers to captain, the first captain
14 promotions in five years. And in that regard, I need to
15 correct a typo in my letter to the Court. I wrote 2015 when I
16 should have said 2018 when I wrote about that. I apologize for
17 that, your Honor.

18 The department has agreed on deadlines for meeting
19 specific recommendations with the monitor and will carefully
20 work with the monitor on all of the others. The way to keep
21 the results moving in the right direction, as they are right
22 now, is to let the teamwork of Commissioner Molina and his
23 staff and the monitoring team continue. When you hire people
24 to fix something that's broken, you don't pull them off the job
25 or distract them just when things are starting to get fixed.

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1 The plaintiffs' counsel are seeking a new court order because
2 they are unsatisfied, and no doubt, when lawyers see problems,
3 they think first of court orders. But not every problem is
4 best solved by a new court order.

5 We already have five detailed governing orders in this
6 case with what we count as approximately 400 discrete
7 requirements. Orders are difficult to write and hard to
8 interpret in this extremely complex area. They are
9 time-consuming to draft, including the time of the very people
10 doing the work of improving safety. Ultimately, another page
11 or two of orders will not accomplish the goals that we share.
12 What will do that is the hard, hands-on work of people like
13 Commissioner Molina and his staff.

14 Unless the Court has questions at the moment, then the
15 commissioner would like to address the Court.

16 Thank you.

17 THE COURT: Thank you, Mr. Scheiner.

18 Mr. Commissioner.

19 MR. MOLINA: Good afternoon, your Honor. Thank you
20 for inviting me to participate in these proceedings.

21 I recognize as a department we have a long way to go
22 on our pathway to reforming and enhancing the city's jail
23 system. However, considering where the department was on
24 January 1, 2022, when the Adams administration took over
25 leadership of this city, the department has come a long way and

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1 made some strides in key areas, and I will share a few with the
2 Court.

3 The department has addressed the absentee crisis with
4 a combination of supporting staff and proactive staff
5 engagement along with enforcing longstanding policies to hold
6 staff accountable -- accountability, which, quite frankly, did
7 not exist between 2015 and 2021. This has led to approximately
8 a 70 percent decrease in staff absenteeism.

9 On enforcing basic correctional security practices, we
10 have seen a sustained decrease in slashings and stabbings.
11 Fiscal year to date, approximately ten months, slashings and
12 stabbings department-wide have decreased 21 percent. Calendar
13 year to date that decrease is 40 percent, and since the
14 November 2022 proceeding, when I was last in your court, your
15 Honor, to date, that decrease is 34 percent. While the
16 department has been experiencing an increase in the
17 incarcerated population during calendar year 2022, use-of-force
18 incidents, for the first time, decreased in calendar year 2022
19 versus calendar year 2021. That decrease was approximately 14
20 percent.

21 During the monitored years of 2015 to 2021, the
22 department experienced steady population declines, yet
23 use-of-force incidents continued to rise. For the first time,
24 the department actually experienced a decrease in calendar year
25 2022 in use-of-force incidents, despite the population

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1 increasing. Fiscal year to date, the numbers are flat, and I
2 recognize that, despite the calendar year 2022 decreases, the
3 number of force incidents overall are still too high, and over
4 time, with our new leadership team and training efforts, I
5 expect we will make progress in this area too.

6 As I had previously recommended, in 2016, when I was
7 the chief internal monitor at the department, but had not been
8 done, we have now infused outside correctional expertise at the
9 three-star uniformed chief level and two-star chief level.
10 With this Court's assistance, we have also done so at the
11 warden level. An outside warden started on April 24 to lead
12 three of our facilities. We have recently promoted 26 officers
13 to captains, which is the first time the department was able to
14 promote captains in five years, and 27 captains to assistant
15 deputy wardens. I carefully considered each of those assistant
16 deputy warden promotions and determined that it was appropriate
17 to give each individual an opportunity to succeed in their new
18 leadership role.

19 I am further committed to ensuring that our officers
20 receive training and mentorship so that future promotions from
21 within our ranks can be made. And it is important to note that
22 our current staff are the ones who contributed to the recent
23 reductions in slashings and stabbings and uses of force.

24 In the area of staff accountability, after inheriting
25 a disciplinary-case backlog of over 3,700 cases, going back to

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1 calendar year 2017, with the hiring of a former judge as the
2 department's deputy commissioner of trials, I have signed off
3 on the adjudication of over 3,000 disciplinary cases, and
4 unfortunately, in over 285 of those cases, staff were forced to
5 separate from the department via termination, medical
6 separation, forced resignation or forced retirements. The
7 level of disciplinary adjudication and forced separation is
8 more disciplinary action than any commissioner in DOC or in any
9 agency in the city's history. We are on our way towards having
10 a timely and meaningful disciplinary process.

11 In addition, I'm committed to ensuring that possible
12 misconduct is fully investigated. When I became commissioner,
13 I undertook a massive leadership transition. One of the areas
14 in which there was new management was the investigations
15 division, which had issues prior to the start of this
16 administration.

17 As this Court is deeply aware, there are many complex
18 problems as well as regulatory challenges in the management of
19 the persons in custody, and we are going to have bumps in the
20 road with staff adapting to different styles of management --
21 and that is to be expected and what was happening in the
22 investigations division over the last ten months. But that
23 should not take away from the enormous work that went into
24 addressing a number of operational improvements we have made to
25 stabilize the entire department, which at the time was at the

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1 brink of collapse in January 2022. And in support of my
2 commitment to investigations, especially in the area of use of
3 force, the current acting deputy commissioner of the
4 investigation division will be focused on use-of-force
5 investigations, and nine new hires will soon join the
6 investigation division. All other misconduct and other
7 compliance investigations will be handled by the special
8 investigations unit so that the acting and eventual deputy
9 commissioner of the investigations division does not have to
10 balance multiple priorities and can focus solely on
11 use-of-force investigations.

12 Your Honor, I'll close with this.

13 The current administration is committed to
14 action-oriented reform and evolving the criminal justice system
15 in this city, focused on safety, rehabilitation, and
16 appropriate second chances. The Department of Correction is
17 far from perfect, but our staff care, and many can identify
18 with the lived experiences of those in our custody. I think
19 over the last almost 16 months we have shown what the staff can
20 do when they are properly led, trained, and mentored, and this
21 administration is committed to supporting this department, and
22 it has shown that via the interagency task force and all the
23 support the mayor has provided me as the department's
24 commissioner. For once we see what is possible when city
25 leadership is committed to action.

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1 Thank you for your patience and the time to share my
2 thoughts. I'm happy to answer any further questions the Court
3 may have.

4 THE COURT: Thank you, Commissioner Molina.

5 I'd like to come back to the two topics that I queued
6 up in my introductory remarks that were of particular concern
7 to me. One is what appears to have been a substantial time
8 delay in engaging the reports of problems with ID. And so can
9 you contextualize that for me.

10 MR. MOLINA: I'll try to, your Honor.

11 So, I did communicate with the monitor and the deputy
12 monitor on or about December 21 about their concerns, and they
13 alerted me that they were going to send me their concerns in
14 writing. At that time, in December, we just came out of our
15 last proceeding in November, the department was undertaking a
16 number of just complex challenges, and I asked at that time how
17 quickly did the monitoring team need a response from me on that
18 letter so that I can digest it, and they communicated to me at
19 that time that they had concerns but allowed me the time to
20 digest it and respond back to the monitoring team, which we did
21 within two months.

22 We also did take some action during that time, after
23 we had sent the letter back to the monitoring team, which
24 clearly -- I think they viewed how they described it as being
25 lackluster, but you have to understand in the context of the

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1 all of the macro issues that I'm trying to address throughout
2 the whole department, fixing a number of all these complex
3 problems simultaneously is just going to take some bit of time.
4 But we did address them, and if you have further questions
5 regarding that, I'm happy to answer them.

6 THE COURT: I will leave that topic at that for now,
7 and I thank you for that response.

8 As to the ESU and probe team issue, where do things
9 stand now, and are there immediate measures that are being put
10 in place?

11 MR. MOLINA: Yes. Thank you for your question, your
12 Honor.

13 So, as it relates to the ESU issue, I think at the
14 beginning of 2022, as we were trying to stabilize the
15 department, which violence at that point had significantly
16 exceeded, as has been reported in the monitor's reports, there
17 was an unnecessarily, I think, overreliance on the use of the
18 emergency services unit to provide support to our various
19 facilities, overtaxing that unit, which I think impacted the
20 decision-making of the unit.

21 At that time our probe teams were -- I would say had a
22 lot of challenges because we were also dealing at the beginning
23 of the staffing crisis during that time as well. I will say --
24 we have appointed a new ESU commander, but what I will say
25 about the prior ESU commander, I was engaged with the ESU

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1 commander. He, on a number of occasions, took proactive steps
2 when he reviewed incidences and did suspend members of the team
3 or removed members of the team when he thought that there was a
4 problem or indicia of being concerned, and he also made the
5 proper notifications to other oversight bodies that needed to
6 be made during that time.

7 But I understand the monitor has had challenges with
8 the ESU since, I believe, the inception of this oversight -- of
9 the consent judgment. So I understand why there is -- people
10 are impatient to see change happen. But we responded. We have
11 a new ESU commander. That gentleman brings over 35 years of
12 experience at the Department of Corrections. He's a very
13 skilled manager. One of the things that we talked about in our
14 meeting yesterday is that the monitor had asked if it would
15 make sense for him to engage with the ESU commander because he
16 had not had much engagement with the prior ESU commander, and
17 of course, I support the monitoring team being able to speak to
18 any employee or staff member that they feel they need to speak
19 to to understand, to get a nuance of the situation.

20 We also had recently appointed, as this Court knows, a
21 deputy commissioner of security. We've also recently appointed
22 assistant commissioner of security operations, and the deputy
23 commissioner engages with the monitoring team frequently, as
24 the monitor requests, and he's also fully engaged with the
25 management of the emergency services unit, and the ESU

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1 commander reports directly to the deputy commissioner of
2 security, which is also the deputy security manager under the
3 consent judgment.

4 In addition to that, we are also concerned about any
5 future appointments to members of the ESU team, and we made it
6 clear to the monitor and his team yesterday that no member will
7 be assigned to the ESU unless the deputy commissioner of
8 security and myself both, together, agree that that person is
9 deserving, mature and skilled enough for the appointment of
10 being placed in a skilled unit like ESU.

11 THE COURT: Thank you, Mr. Commissioner.

12 MR. MOLINA: You're welcome.

13 THE COURT: I will now turn to counsel for the U.S.
14 Attorney's Office.

15 MR. POWELL: Good afternoon, your Honor.

16 THE COURT: Good afternoon.

17 MR. POWELL: The government remains extremely
18 concerned about the ongoing unsafe conditions on Rikers Island
19 and the department's ongoing failure to expeditiously and
20 effectively implement the reforms required by the action plan
21 as well as the department's ongoing failure to comply with the
22 consent judgment and other prior court orders. The government
23 shares many of the concerns itemized in the class counsels'
24 April 25 letter, so we're not going to reiterate all those
25 here, given time constraints.

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1 While the department has made some progress in
2 implementing certain components of the action plan, as the
3 monitor states in his report, the well-documented patterns and
4 practices of use of force-related misconduct continues without
5 any appreciable improvement, and the jails remain volatile and
6 deeply dysfunctional. Simply put, the pace of reform must be
7 accelerated.

8 There are several statistics that have been provided
9 in the submissions and by the city today. At best, I think the
10 statistics paint a mixed picture. Just to point out a very few
11 of them, with respect to use-of-force numbers, in 2022 alone,
12 there were 434 use-of-force incidents resulting in serious
13 injuries. That's more than twice the number of such incidents
14 in 2020 and almost six times the number of those types of
15 incidents in 2016, the year after we entered into a consent
16 judgment to address constitutional violations.

17 With respect to stabbings and slashings, based on the
18 reporting from the monitor, they appear to be at a record high.
19 In 2022 alone, there were 468 instances where a staff member or
20 inmate was slashed or stabbed in the jails. In 2020, there
21 were only 121.

22 Finally, according to the department's own reviews,
23 during the second half of 2022, there were 320 use-of-force
24 incidents where staff violated the department's own
25 use-of-force policy or the policy on the use of chemical agents

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1 and 586 incidents that were deemed to be avoidable. I'm going
2 to stop there with the statistics, but at best, I would say
3 they paint a mixed picture. It often depends on which period
4 you're looking at, and if we look back to 2016 and 2015, where
5 we found it was necessary to implement a court order, the
6 numbers are all much, much worse.

7 Further, as found by the monitor, the city and
8 department continue to be in noncompliance with the core
9 provisions of the consent judgment and other court orders. I
10 won't go through them all, but they're in noncompliance with
11 the requirement to implement and follow a use-of-force policy;
12 the requirement to conduct timely, thorough and objective
13 investigations of use-of-force incidents; the requirement to
14 adequately supervise the youngest people in their custody in a
15 manner that protects them from harm; and they're in violation
16 of the requirements related to the deployment and conduct of
17 the emergency response teams that you talked about a bit this
18 afternoon.

19 The government appreciates the commissioner's efforts
20 to bring in well-credentialed individuals to fill top
21 leadership positions and the recent hiring of a handful of
22 assistant commissioners of operations to run several of the
23 jails. We will see how that goes, and we are cautiously
24 optimistic.

25 The monitor has found that these new leaders have made

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1 some progress in addressing some of the longstanding systemic
2 problems in the jails and have been able to stabilize certain
3 facilities, such as RNDC, which, as you know, has a history of
4 extraordinary levels of violence. Unfortunately, other actions
5 and personnel decisions by this department call into on
6 question its commitment to appoint competent and qualified
7 individuals at all levels of the agency who will dismantle the
8 culture of violence that has existed for decades. I'd like to
9 highlight just a few items from the monitor's report that
10 exemplify the cause for our skepticism.

11 With respect to the ADW promotions, which was briefly
12 addressed, the department promoted 12 individuals to this
13 important facility leadership position even though the
14 department's own internal screening process deemed those
15 individuals unsuitable for the position. The monitor, with
16 obviously a tremendous amount of corrections experience, also
17 expressed disagreement with those promotions given these
18 individuals' documented prior disciplinary history and poor
19 conduct. Indeed, the department's own trials division, the
20 unit responsible for imposing discipline on officers,
21 recommended that most of these folks not be promoted at all.
22 In one instance, three separate divisions of the department
23 recommended against promotion. The recommendations were
24 ignored. The commissioner promoted all 12 anyway, and we still
25 haven't, I don't think, today received an adequate explanation

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1 for why all these 12 individuals with checkered histories and
2 who were not recommended by other divisions with the department
3 have been promoted into what are top leadership positions at
4 the facility level.

5 With respect to staff supervision generally, the
6 monitoring team has continued to express alarm with the overall
7 deficiencies in the department's supervision of uniformed
8 staff, including supervisors' lack of command of the
9 use-of-force policy and their failure to detect and address
10 improper security practices. That's in this report. You
11 probably will find it in the 10, 15, 20 prior reports as well.
12 Given the recent ADW promotions and the substantial reduction
13 in the number of captains and ADWs who actually are working in
14 the housing areas -- again, going to the data in the monitor's
15 report -- it appears the department still lacks a sufficient
16 number of qualified internal candidates to meet its current
17 need for more robust staff supervision and to ensure adequate
18 supervisory presence, particularly on evenings and on weekends,
19 as the monitor has pointed out.

20 As we have done before in prior court conferences and
21 in our meetings, we urge the city to consider filling
22 second-tier leadership positions, like ADWs and deputy wardens,
23 with qualified individuals outside the current department ranks
24 and, if necessary, to consent to a court order that will allow
25 it to do so.

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1 Briefly, with respect to the ESU issue that your Honor
2 referenced, similar problematic personnel decisions were made.
3 Over the last several years, the monitor has repeatedly
4 expressed grave concerns about the conduct, management and
5 leadership of the department's emergency response teams,
6 including the frequent use of excessive and unnecessary force,
7 the hyper-confrontational behavior, the unit's inadequate
8 leadership and its failure to properly screen its members. The
9 department, over those many years, has done little to address
10 those problems despite court orders directing it to do so. It
11 was only after the monitor issued his report early this month
12 that the department removed the leader of ESU and replaced him
13 with another individual. The monitor also discussed how 16
14 officers who had been previously removed from the ESU in 2021,
15 after another screening process, were put back on the ESU in
16 2013 under Commissioner Molina's and his leaders' supervision.

17 THE COURT: Should the year reference be 2023, not
18 2013?

19 MR. POWELL: I'm sorry. 2021 is when the 16 were
20 taken off, removed from the ESU, and then they were put back on
21 this year, 2023.

22 THE COURT: Thank you.

23 MR. POWELL: Despite meet-and-confer sessions we've
24 had with the city, we still don't understand exactly why that
25 happened. We do understand that the process has begun to

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1 remove them once again.

2 You know, it is our understanding that the department
3 has committed now to reviewing the current membership of the
4 ESU, which has always been a concern, and we look forward to
5 receiving the results of those reviews, but the fact that
6 individuals are removed and then placed back on -- removed for
7 a reason, presumably, and placed back on -- call into question
8 again the commitment to put the right people in the most
9 important positions in the jails.

10 I know your Honor has asked about the use-of-force
11 investigations and the abrupt decline in the quality of those
12 investigations. That was particularly alarming to the
13 government as well. The consent judgment requires objective
14 and thorough investigations of every use-of-force incident and
15 the imposition of meaningful discipline when staff utilize
16 excessive force. However, under the leadership of the deputy
17 commissioner of investigation divisions, appointed by this
18 commissioner in the summer of 2022, the quality of use-of-force
19 investigations deteriorated significantly. Far fewer cases
20 were referred for a full ID investigation, which is a more
21 thorough, complete investigation, and use of force-related
22 misconduct, most importantly, was frequently not detected and
23 went unpunished. Even incidents involving head strikes to
24 inmates and incidents involving serious injuries were not
25 consistently referred for full ID investigations, as required

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1 by your Honor's prior court orders.

2 We still today, although the commissioner acknowledged
3 that the monitor had presented his concerns in writing and
4 verbally on December 21, 2022 -- other than describing it as a
5 bump in the road, we still are not satisfied that there's an
6 explanation for why it took so long to address what was a clear
7 regression in one of the core parts of the consent judgments.
8 And again, it wasn't until the eve of the filing of this report
9 publicly that was going to describe and did describe all these
10 shortcomings and deteriorations that the deputy commissioner of
11 ID resigned. The fact that the commissioner allowed such a
12 decline within the unit responsible for holding staff
13 accountable for misconduct and didn't take any meaningful
14 action to address the problem after being notified of it,
15 including by removing the leader, which he now says was largely
16 responsible for the problems, has shaken our confidence in the
17 department's commitment to true reform.

18 With respect to the issue of the look-backs on those
19 investigations that were closed from June 2022 to March 2023,
20 as of today, it remains unclear how the department intends to
21 review the hundreds of potentially flawed use-of-force
22 investigations that were closed without further action and to
23 make sure that any officers who engaged in misconduct are held
24 accountable. We understand that it's a lot of cases and that
25 it's going to take a lot of resources, but we got here because

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1 the decision, the issue that was raised by the monitor, which
2 is now referred to as a bump in the road, wasn't timely dealt
3 with. Given the monitor's finding that closed investigations
4 were often incomplete, inadequate and unreasonable, we
5 respectfully request that the Court direct the department to
6 file a report with the Court updating your Honor and the
7 parties on the steps it intends to address these closed
8 investigations.

9 Similarly, with respect to ID, we share the monitor's
10 concerns that the investigation division currently simply does
11 not have a sufficient number of investigators to conduct timely
12 and thorough investigations of all use-of-force incidents, as
13 required by the consent judgment. Approximately 25
14 investigators left the unit in 2023 alone, possibly given, due
15 to the way it was being managed, and the number of
16 investigators and supervisors assigned to work on use-of-force
17 investigations is about half of what it was in January 2020.
18 Though the commissioner has told you and we learned before this
19 conference that there are nine candidates in the hiring
20 pipeline, the numbers just simply don't come close to the
21 number needed to handle the large volume of use-of-force
22 incidents which we know will continue to occur.

23 Again, we respectfully request that the Court direct
24 the department to report on the steps it intends to take to
25 recruit and hire a sufficient number of ID staff to meet its

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1 obligations under the consent judgment.

2 Finally, an issue we haven't talked about this
3 morning -- this afternoon, the June 2022 action plan required
4 the department to conduct tours of housing units every 30
5 minutes and to immediately institute improved practices to
6 ensure that routine touring is occurring, including through the
7 use of tour wands. That's from the action plan. The action
8 plan also required that the monitoring report, including the
9 one that was just filed, include data regarding compliance with
10 housing tours. This refers to the basic function of walking
11 around the jails and making sure people are safe and their
12 needs are being met.

13 In the most recent report by the board of correction
14 on deaths in custody in 2022, the board of correction found
15 that insufficient or inadequate rounding and supervision was
16 present in five of the seven deaths covered in the report.
17 However, during our meet-and-confer sessions, the department
18 has still not adequately explained the steps it is taking to
19 ensure that supervisors and correction officers conduct timely
20 and appropriate tours of housing areas to ensure that the
21 people incarcerated on Rikers Island are safe and are having
22 their basic needs met. It appears that the department has done
23 little to move forward with actually implementing its tour wand
24 project, including the use of tour wand data or other tools to
25 evaluate staff's touring practices. They invite the department

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1 to provide more details on its effort in this area and request
2 that the Court direct that reliable data reflecting compliance
3 with tour requirements be included in future monitor reports.

4 Finally, to address the point that the Court asked
5 with respect to recommendations, and I know that's later on the
6 agenda, but very, very briefly, the government believes the
7 city and the department should firmly commit to promptly
8 implementing the monitoring team's recommendations. We
9 understand, though, that how to best implement some of these
10 recommendations may require some consultation with the
11 monitoring team, which we understand has started and that
12 Mr. Martin referred to earlier, and that the discussions may
13 lead to more fleshed-out operational suggestions. We expect
14 that the monitor will provide a description of the extent to
15 which the department has implemented these recommendations in
16 its next report and will closely evaluate this assessment when
17 deciding our next steps, but we do feel that the city should
18 agree to implement those recommendations promptly.

19 Thank you, your Honor.

20 THE COURT: Thank you, Mr. Powell.

21 Now, counsel for the plaintiffs.

22 MS. SIMPSON: Yes. Good afternoon, your Honor, and
23 thank you.

24 We agree with the many concerns expressed by the
25 United States government.

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1 We've heard a great deal today about grounds for
2 cautious optimism, that continuing this now almost eight
3 yearlong process will get the city to live up to its
4 commitments enshrined in the court orders and to end the
5 pattern and practice of brutality against our clients, but
6 respectfully, we simply do not think that the record justifies
7 that optimism. It is a grim conclusion -- but we think there
8 can be no other -- that this remedial process has not, is not
9 working. Excessive and unnecessary force is entrenched in the
10 city jails, and I'll try not to repeat too many statistics
11 here, but over and over again, the data shows that it's a
12 feature of the department, not a bug.

13 Use-of-force rates are twice as high as they were when
14 the Court first entered relief, and while it is not surprising
15 that violence in 2022 came down from the unprecedented
16 emergency levels of 2021, what that means is that last year
17 there were 7,005 use-of-force incidents. The proportion of
18 incidents with serious injuries is three times the proportion
19 in 2016. The monitor describes the rate of slashings and
20 stabbings as "exorbitant," and today the city lauded five
21 stabbings and slashings in a month in RNDC, but for reference,
22 in 2019 and 2020, there were 13 and 15, respectively, in the
23 entire year in that facility. These would have been simply
24 unfathomable numbers when the consent judgment was entered, and
25 they are, frankly, unfathomable now. What are considered major

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1 events in other systems are routine incidents in this city, and
2 it's important to remember the brutality behind these
3 numbers -- heads that have to be stapled; fractures; gashes;
4 shoves headfirst into solid doors; being handcuffed while
5 you're kicked or punched or your head is shoved into the
6 ground; being sprayed with OC spray that hurts, that stays on
7 you for hours, that makes it difficult to breathe. It's
8 gratuitous pain and injury. It's about fear, our class members
9 never knowing when this could happen to them.

10 And the record is also clear that at least half of
11 these uses of force, 48 percent by the department's own
12 analysis, came from basic correctional failures to do things
13 like lock a door. Despite nearly eight years of the monitor's
14 robust assistance of their recommendations, the monitor still
15 describes staff's hyper-confrontational behavior and absurd
16 inadequacies in supervision, such as writing in a logbook no
17 issues after a tour, when there are clear security lapses
18 plainly visible; failing to even have a command of the
19 use-of-force policy; routinely making situations worse. A
20 limited number of supervisors, says the monitor, with, quote, a
21 skilled deficit. Both the remedial orders and the action plans
22 were targeted at improving staff supervision in the jails, but
23 the city simply has not done it. The number of captains has
24 decreased. The roster of assistant deputy wardens does not
25 provide adequate supervision because of the quality of the

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1 individuals in those roles and, as the monitor puts it, that
2 they are, quote, drawn from the same core of captains who have
3 generally struggled with these essential skills and that, as
4 the government said, deficiency was evident in this monitoring
5 period, when nearly half of the 26 people the commissioner
6 promoted to assistant deputy warden were not recommended for
7 promotion by the department's own divisions, the city promoted
8 them anyway. And the city refuses to look outside the agency
9 for a better pool of candidates, and we agree with Mr. Powell
10 that they should do so immediately.

11 There are, as we began to lay out in the letter we
12 submitted on April 25, many areas in which the city has simply
13 failed to make progress. The total failure to reduce even one
14 awarded post assignment in nine months, almost ten, due to a
15 claimed union contractual barrier, which the city denied
16 existed in November 2022, when your Honor questioned them about
17 it, no meaningful movement on civilianizing jobs held by
18 uniformed staff, no indication that the city tracks how many
19 posts are abandoned by officers during their tours, not even
20 revising its sick leave policy, despite being ordered to do so
21 within 90 days of the action plan being entered and, as the
22 monitor notes in their report, consistent pressure from them.

23 Another stark example -- and I know that the
24 government went into this somewhat, but I'll return to it -- is
25 how the city has not only failed to reform the emergency

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1 services unit but is indeed doubling down on reinforcing its
2 culture of brutality and impunity. I want to be clear that the
3 accounts about ESU, given for years by the monitor, describe a
4 unit that is abusive, unprofessional, excessive and violent.
5 Over and over again the reports reflect this. And in addition
6 to what Mr. Powell said about reinstating the staff removed in
7 2021, the city has failed to take other basic measures to rein
8 that in, including ignoring its own policy of screening
9 officers who are assigned to the unit, ignoring its own
10 recommendations to remove staff who exhibit problematic
11 behavior, routinely failing to identify ESU misconduct within
12 ID. The message this sends to the department as a whole about
13 reforming, the commitment to reforming the culture of violence
14 is unmistakable, and only when the monitor's report professed a
15 lack of confidence in ESU leadership, only when that was made
16 public did the city act to replace the ESU leader.

17 In our meet-and-confer last week, the city said it had
18 chosen a new leader of ESU to effectuate change but would not
19 inform us of the name of that selection until it had been
20 announced to staff. But then a media report came out that same
21 day reporting that a particular ADW, an officer who reportedly
22 appeared on videotape slamming Kalief Browder to the ground
23 while he was rear cuffed in custody was the new ESU leader.
24 Not only would that incident be troubling in itself, but
25 following up we learned that that ADW was one of the 12 ADWs

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1 that the commissioner recently promoted despite the negative
2 recommendations he received.

3 The city has now changed course and announced a
4 different head of ESU and claims, contrary to what they said on
5 our meet-and-confers, that that ADW was only being considered.
6 But seriously considering this person is yet more evidence that
7 the department continues to make choices to perpetuate this
8 culture and appears to only move away from those positions via
9 critical public attention or pressure from the monitor or from
10 the parties or from your Honor.

11 Similarly, we are deeply concerned by yesterday's
12 media reports that one of the new assistant commissioners for
13 warden replacements had been suspended in 2021 for standing by
14 while a person with mental illness banged his head repeatedly
15 against the wall and did not intervene. We understand that the
16 commissioner dismissed those charges, administratively filed
17 them in late 2022 -- November, I believe -- and we believe the
18 city should explain the circumstances of this incident and the
19 disposition of the charges given that this promotion is for a
20 leadership role and implementing this Court's orders regarding
21 suicide prevention and staff performance in crisis, among
22 others.

23 So it comes as no surprise that the monitor makes a
24 truly damning set of observations in his April 3 report, but
25 nearly a year into this action plan, 16 months with this

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1 commissioner and over seven years of this consent judgment,
2 "the work completed today has not appreciably improved the
3 department's security practices and the department's
4 problematic approach to use of force department-wide"; that
5 "misconduct is prevalent, and there is no evidence to suggest
6 that practices have materially improved"; that "conditions are
7 demonstrably worse."

8 So where do we go from here? We believe, of course,
9 that the city should follow the Court's orders, including the
10 action plan, that they should enact the recommendations made by
11 the monitoring team in that April report, which are reasonable
12 though, again, not sufficient. We have always said that the
13 city should, and must, take whatever immediate next steps it
14 can to address the risk of harm in the jails, but what we
15 continue to see is not only a slow pace but a slow pace coupled
16 with an agency that tends to regress in areas not constantly
17 illuminated by the brightest spotlights. Investigations and
18 intake provide excellent endless illustrations of this.
19 Investigations deteriorated rapidly the moment that attention
20 was directed elsewhere by way of the action plan, and the head
21 of ID resigned only on the eve of a public report. And
22 laborious, glacial gains in intake over the past year and a
23 half have only occurred after the board of correction made
24 findings and we filed a contempt motion.

25 ESU screening is another example. The monitor directs

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1 the city's attention to ESU personnel, encourages the removal
2 of problematic staff members in 2021, helps them develop a
3 screening policy. Two years later they aren't following that
4 policy and have reinstated some of those staff. That's why
5 reform of this department is not as simple as commonsense steps
6 taking time, because sequencing only works when progress is
7 cumulative, when you can trust where you've been to remain
8 prior progress, and that just has not happened here.

9 How many times will the department only act after the
10 monitor detects a problem or a public report emerges? This
11 structure does not scale up for reform. The monitor cannot be
12 in every corner of the agency, cannot review every command
13 discipline outcome, cannot take deep dives into every ID filed
14 to root out bias, cannot be the captain in the facility that
15 has to lead an incident towards de-escalation rather than
16 unnecessary force. And the same can even be said for our
17 perfect set of assistant commissioners. The inability to trust
18 this agency to sustain progress or implement policy cannot
19 result in an indefinite extension of the action plan or
20 additional recommendations. This amounts to a continuing
21 lowering of the bar, that because the department's intractable
22 dysfunction requires deeper and deeper and deeper levels of
23 remediation, that they get more and more time to attempt this,
24 despite extraordinary harm to our clients.

25 This is, of course, a complex agency, as are many in

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1 our city, but it still can and must be expected to operate
2 lawfully. We cannot keep building foundations in perpetuity,
3 especially with what are essentially the same materials.
4 Simply put, the current state of affairs is intolerable.
5 Staying the same course will not, in our view, and on this
6 record, provide relief and correct a constitutional violation.
7 We are mindful, of course, that under the current schedule,
8 there will be certain benchmarks being assessed in the coming
9 months, and certainly we will look to see what the department
10 will show at that point in the summer report. We're genuinely
11 glad to see long-overdue steps being taken, and we don't wish
12 to stand in the way of those, but on this record, we have not
13 seen evidence to change the views we expressed when we were
14 last before your Honor in November 2022 -- that the city has
15 not disturbed the structures necessary to correct these
16 longstanding harms and that further relief, such as authority
17 independent of the city, remains necessary.

18 Thank you very much.

19 THE COURT: And to be clear, your letter referred to
20 discussing a draft of an order that I haven't seen with the
21 parties, and the monitor's report and the letter from the city
22 spoke of certain points of agreement on timetables. Are you
23 asking me today to develop any specific form of relief or
24 further action?

25 MS. SIMPSON: Beyond the recommendations, your Honor,

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1 you mean?

2 THE COURT: Well, my understanding from the letters
3 was that the request regarding the recommendations related to
4 the attempt to embody some version or evolution of the
5 recommendations in an order that is still in process, so I am
6 assuming you're not asking me to indicate that I will sign or
7 to sign something that doesn't yet exist and as to which pieces
8 are still moving.

9 MS. GREENBERGER: If I may, your Honor?

10 THE COURT: Yes.

11 MR. POWELL: We don't have an order to provide to you,
12 your Honor, because the city has taken the position since we
13 filed our letter that they refuse to consent to an order.
14 Frankly, we thought this order would be low-hanging fruit. It
15 wouldn't address the fundamental problems that we believe the
16 city management continues to have and the city continues to
17 have, but they were the monitor's recommendations. They were
18 all reasonable recommendations. We thought the city would
19 agree to them. Some of them, in fact, are extending deadlines
20 that the city failed to meet that were clear deadlines in your
21 action plan that I can go into.

22 The city, however, has taken the position, which we
23 think is unwarranted, that the recommendations are not ones --
24 there's two categories, that as to one category of
25 recommendations, and I can go into this, they agree with the

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1 monitor's recommendations but they object to them appearing in
2 a court order, which, frankly, makes no sense to us. And as to
3 a second category of recommendations, despite having the
4 monitor's recommendations for some time, they won't even tell
5 us whether they agree with the recommendations or not, and they
6 won't even tell us when they could tell us whether or not they
7 agree with the monitor's reasonable recommendations.

8 And so what we would ask, your Honor, on that front,
9 because we absolutely believe that on this record you could
10 order the city to comply with the monitor's recommendations,
11 but at a minimum, we would ask that the city have to engage and
12 explain, especially as to the monitor's recommendations -- and
13 I can be more specific, your Honor, if that would be helpful.

14 THE COURT: Stay on this conceptual level --

15 MS. GREENBERGER: Yes.

16 THE COURT: -- for now.

17 MR. POWELL: No problem.

18 So, at a minimum, we think the city should have to
19 explain as to those recommendations which they have not taken a
20 position on what their position is and whether and when they
21 will implement the monitor's recommendations.

22 THE COURT: Now, the PLRA, as you know, with respect
23 to orders requires that a court be able to find that any
24 prospective relief that is ordered be narrowly drawn and extend
25 no farther than necessary to correct particular violations of

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1 federal rights and be the least intrusive means necessary to
2 correct the violation of the federal rights. And so as I
3 understand it, you have the city willing to make undertakings,
4 and then you've just said that there are areas as to which the
5 city has not provided a reaction one way or another.

6 I also noticed, in looking through the summary of the
7 recommendations, that there are some that seem to be at a major
8 conceptual level, as in things should improve, which would be,
9 at best, difficult to embody in a court order and, at worst,
10 sort of precatory. And so as to any of these buckets of
11 recommendations, it is certainly a salutary thing to have
12 undertakings and to have focus on recommendations and how they
13 could be implemented, but are you saying that you, plaintiffs,
14 believe that today the PLRA standard could be met as to these
15 recommendations?

16 MS. GREENBERGER: I think it is helpful to be
17 specific, your Honor, and I do also want to reiterate that
18 these recommendations -- again, we thought these would be
19 low-hanging fruit that the city would agree to, and that's why
20 we discussed a proposed order. We did not envision that this
21 would be a big fight with the city, and it's disappointing that
22 it's come to this.

23 First of all, I think it's clearest if you are looking
24 at the April 24 submission by the monitoring team, and on page
25 26 of the report, there are six specific recommendations that

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1 the department has agreed they intended to adopt. Two of
2 these -- I think it's important to be clear -- are changing
3 policies that the action plan required them to change, that
4 they completely violated. They did not change those policies,
5 and now the department has agreed, but will not agree to a
6 court order, to more time to fix their noncompliance. And so
7 respectfully, your Honor has already made all of the PLRA
8 findings that are necessary for those policies. And I will say
9 that the amount of time that the city is asking for and the
10 monitoring team has suggested seems quite excessive to us. I
11 do think it's important to note that, but certainly at a
12 minimum, at a bare minimum, those policies should be
13 embodied -- or, I'm sorry, those changes should be embodied in
14 a court order, and I can be more specific, if that would be
15 helpful, your Honor, on that.

16 So, specifically --

17 THE COURT: Specifically the absence control
18 policies --

19 MS. GREENBERGER: And the MMR policies.

20 So, the MMR policies were supposed to be done within
21 60 days, which was last August, and then in the April 3 report,
22 the monitoring team recommended the deadline be May 15 and the
23 revised recommendation that the city has now agreed to is June
24 30 for policies that were supposed to be revised last August
25 and were not. And they're just policies, your Honor; it

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1 doesn't make any sense to us. But at a minimum, your Honor
2 already held that those policies should be revised and needs to
3 make no further findings on that.

4 There is then the sick leave policy, as you mentioned.
5 That one, the deadline -- I'm just looking -- was last
6 September, I believe, 90 days, and the monitoring team and the
7 department are suggesting May 15 for that.

8 The third, there's another one that's also a policy
9 change. That's with the trials division. That is not part of
10 the action plan, but I think the record that's in front of you
11 have from the monitoring team is more than sufficient to meet
12 the PLRA findings that that change is necessary.

13 The fourth of these is status reports to the Court on
14 the intake matters. Frankly, your Honor has already ordered
15 that there be status reports as part of its contempt order, and
16 I don't actually believe PLRA findings are necessary for a
17 status report to the Court.

18 The last two are eliminating backlogs of disciplinary
19 cases and resolving medical incompetence cases, and the record
20 is ample about the need to eliminate those backlogs and resolve
21 those medical incompetence cases. And in prior remedial orders
22 that dealt with both of those issues, your Honor made findings
23 as well. Again, none of these findings would be necessary if
24 the city would just consent to these orders, and they should be
25 asked more clearly why they are unwilling to consent to orders,

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1 especially orders that are extending time for things that they
2 promised your Honor that they would do, that were completely
3 within their control to do and we are many months later and
4 they have inexplicably not done.

5 THE COURT: Thank you.

6 MS. GREENBERGER: I'm sorry, your Honor. Just one
7 more thing?

8 THE COURT: Yes.

9 MS. GREENBERGER: There is another set of relief that
10 the -- I'm sorry, recommendations that the monitoring team has
11 suggested and, as I said, the city has not responded to. And
12 you're completely right, your Honor, that some of those
13 recommendations would require additional discussion and
14 probably are not ripe for a court order, but some are actually
15 quite discrete and are ones that are completely unobjectionable
16 and discrete, and I don't understand why the city hasn't agreed
17 to them and agreed to entry of a court order.

18 So there's three that I would highlight in that
19 category: Screening of staff currently assigned to ESU for
20 suitability of assignment, which is something we've discussed a
21 lot today; second, ensuring that supervisors are assigned 24/7
22 to the facilities; and third, determining what its -- as
23 Mr. Powell and we have discussed, there is a shortage of staff
24 investigators in ID. What is the city's plan to resolve that?

25 The monitoring team's recommendation was that the ID

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1 should either reassign investigators from SIU to ID or do
2 aggressive recruitment efforts, and the city hasn't agreed to
3 either.

4 THE COURT: Thank you.

5 Does the monitor wish to be heard on any of this
6 before I return to the city's counsel?

7 MS. FRIEDBERG: No, your Honor.

8 THE COURT: Mr. Scheiner.

9 MR. SCHEINER: Yes, your Honor. Please let me know if
10 there's something specific that you want me to respond to that
11 I haven't -- that I've mentioned.

12 THE COURT: Well, there's the -- oh, I'm sorry.
13 You're going to speak and then I can follow up.

14 MR. SCHEINER: Right, because I might not cover a
15 point that you want to hear us on.

16 With respect to the last thing that was mentioned,
17 that there were recommendations that were not part of one of
18 our agreements with the monitor and the plaintiffs thought they
19 were appropriate for an order, we don't agree with that, but
20 part of the reason is some of them are actually being done or
21 have been done. So I don't understand the motivation for the
22 order. But the screening of staff for ESU, that occurs
23 periodically. I think it's quarterly. That's already
24 happening. It's stated in the monitor's report, so I don't
25 understand why that would be an appropriate topic for an order.

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1 The supervisors 24/7, there are supervisors in every
2 facility 24/7, so I don't know if there was a prior deviation
3 from that, but certainly the current condition is that there
4 are supervisors 24/7 in all the facilities.

5 With respect to, you know, hiring or moving people to
6 investigate use of force, I think that falls into the category
7 of something that is aspirationally a good idea. I mean we
8 don't disagree with it in principle, but it does require
9 working with the monitor on exactly what that means, how many
10 people could be moved from the special investigations unit to
11 ID without compromising other interests, on how to hire people
12 within, you know, budgetary constraints. There are a lot of
13 moving parts to doing that, and there's no obvious phrasing of
14 an order that would be objective as to whether or not it was
15 achieved.

16 We feel that the best way to measure whether or not
17 the department is making progress with respect to these
18 recommendations, or any of them, is to continue working with
19 the monitor, and the monitor will not hesitate to report to the
20 Court if they feel that we've refused to do something that's
21 obviously required and feasible under the action plan or the
22 consent judgment, and then, your Honor, we'll have an
23 opportunity to, you know, take remedial steps at that point.
24 But the monitor is not asking for these orders, and we don't
25 think that it's appropriate, because every time an order is

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1 issued -- well, first of all, let me back up a little bit as to
2 the question of whether it meets the standard.

3 I don't see the connection, your Honor, between the
4 particular provisions of these orders and an identified
5 constitutional violation. I realize that they are meant to
6 implement an action plan, which was agreed to by the
7 department, to implement the consent judgment which was meant
8 to remedy deliberate indifference to excessive use of force and
9 conditions of violence, but at this granular level of these
10 particular orders, I don't agree that it meets requirements of
11 the PLRA.

12 We are committed to, obviously, complying with the
13 deadlines that the monitor requested, and we intend to do so,
14 but even compliance with those is really a matter of opinion of
15 the monitor, because we're required to finalize MMR policies;
16 doesn't say what they're supposed to say. What they're
17 supposed to say is being worked out between us and the monitor
18 as well as finalized sick leave and absence control policies.
19 We can finalize policies, but that doesn't say what those
20 policies are. So it seems to me that a rather arbitrary court
21 order to just say we have to issue new policies, they're
22 supposed to be policies that the monitor agrees with us are
23 appropriate and feasible and can be enforced.

24 And I do want to point out in this connection that
25 there's demonstrable -- in fact, drastic -- improvement in

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1 these areas of absenteeism, of reducing sick leave, of
2 discipline of those who are abusing sick leave. So the
3 problems that the new policies are meant to address are being
4 solved. It doesn't mean we don't need new policies. We do.
5 We've always agreed with that. But to put it colloquially,
6 where's the emergency with respect to sick leave? We
7 drastically reduced the abuse of sick leave. So in other
8 words, as a practical matter on the ground, the problem is
9 being solved.

10 And also, I don't see a connection between sick leave
11 *per se* and any constitutional violation. But we want the staff
12 to be present so that the people in our custody are safe, and
13 that's why, in accordance with the action plan, we've stepped
14 up enforcement against sick-leave abuse and taken steps that
15 are having obvious, objective impact in the right direction.
16 So we don't see a need for orders in that respect.

17 One of the provisions we've agreed to do is the trials
18 division shall evaluate the use of lower level sanctions and
19 expunge the case in consultation with the monitoring team. I
20 don't see how that could be more subjective and difficult to --
21 not permitting of enforcement really. We're already evaluating
22 them, and we will consult with the monitoring team. But
23 whether we did so sufficiently, whether the consultation was
24 enough, how many meetings that means, how much consideration is
25 required, I think it's entirely subjective and not appropriate

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1 for court enforcement.

2 So that's my response with respect to the court order.

3 I also want to mention that, of course, we have agreed
4 to court orders in the past, and our experience is that they
5 take a very long time to negotiate if our, you know, consent is
6 needed. And the thing is, is that the same people who would
7 have to inform the construction of the court order are the
8 people who are taking the steps, and I'll address the issue of
9 the statistics in a moment. But they're taking effective steps
10 to solve these problems, such as the sick leave problem, such
11 as use-of-force cases going down. And to draw them away from
12 that in order to work out a court order to enforce
13 recommendations that the monitor is working with us on, you
14 know, completing seems to me an unnecessary distraction and a
15 drain on our resources as well as ultimately the Court's if
16 there's going to be enforcement action with respect to any new
17 court order.

18 You know, bottom line is, your Honor, we think we have
19 enough court orders to work with here, and as I mentioned
20 before, whatever has happened in the past, I think that almost
21 all the indications -- perhaps the U.S. Attorney's Office or
22 Legal Aid could find an exception, but when I look at the
23 monitor's report, every indication is that the use of force is
24 going down. You know, slashings and stabbings have been a
25 difficult area, but we have improvement there too. But most

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1 importantly, the use of force has been going down even while,
2 as the commissioner noted, the population is going up. So it's
3 moving in the right direction.

4 But I want to speak to the repetitive comparison of
5 where we are now versus 2015. I wasn't on this case in 2015.
6 I didn't study the situation at that time, but what I do know,
7 as I think everyone knows, is this is a very, very different
8 world from the world of 2015. We haven't had an opportunity to
9 brief why that is. It's a complex question, but there are some
10 obvious things that have occurred. One is the COVID-19
11 pandemic, which drastically cut into our available staffing as
12 well as our total available staff.

13 Another thing that's happened since that time is bail
14 reform, which has changed the composition of people who are
15 being committed to our custody to those who are accused of the
16 most violent crimes. Another thing that's happened in that
17 time is a general societal rise in mental illness. And I don't
18 have the numbers, but I would suspect that that's reflected --
19 serious mental illness -- in the population that's in our
20 custody.

21 We also have rising crime rates since 2015, so that
22 the simplistic approach that because something is worse in the
23 jails today than it was in 2015 must be our fault, must be the
24 result of deliberate indifference, I think, is far too
25 simplistic a formula.

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1 Obviously -- maybe it's not obvious to the plaintiffs,
2 but your Honor, the city's firmly committed to doing everything
3 possible to come into compliance with your Honor's orders and
4 the prior undertakings, but we do so in a different environment
5 than existed in 2015, and the sheer numbers of use of force, as
6 unhappy as we are with them -- and I believe we are as unhappy
7 with them as are the plaintiffs, the sheer numbers don't really
8 tell you the whole story, because unfortunately, it is very
9 difficult to confine people against their will without the use
10 of force occasionally. And sometimes people get hurt because
11 appropriate force is used. Other times they get hurt because
12 it's inappropriate, and we can't infer simply from numbers
13 which is which. That's why we have investigations.

14 So I think there have been a lot of sweeping
15 accusations that inmates don't know when they're going to be
16 set upon by correction officers for no reason and harmed
17 significantly. I think that's unfair, and I don't think
18 there's any evidence in this record that correction officers
19 are randomly attacking inmates. That's not what is happening.
20 Each incident has cause, and as we sit here today, we don't
21 know what the cause of each incident is. What we do know is
22 that the city is firmly committed to reducing the need for use
23 of force, to reducing the situations that give rise to injury
24 either because the people in our custody are engaging in
25 violence with each other or against officers.

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1 For example, it seems like a simple thing, but
2 recently, the department distributed tablets to the people in
3 custody, because it was observed that a lot of time people who
4 were idle, who were not able to pursue their interests or
5 things they needed to access through the criminal justice
6 system, because of that idleness, it raised the risk of violent
7 incidents, which, of course, raises the risk of injury, which,
8 of course, raises the risk that force has to be used. So we
9 took upon the idea of giving the inmates the tablets, and we
10 think that that's actually having a beneficial effect. That's
11 just one small piece of the puzzle. There are many, many
12 variables that contribute to the level of violence and the
13 level of use of force.

14 So I just have to come back to the bottom line of if
15 you look at the statistics, they do show a consistent
16 improvement since at least the middle of 2022 and much more
17 rapidly in 2023. And there's an explanation for that. It's
18 because new management can't change everything immediately. It
19 takes time to hire new people, to put new practices into place
20 and to put a new culture in place. And I think the monitor has
21 given the Court sufficient reason to conclude that we are well
22 on the way towards that.

23 I do want to address the assertion that the promotion
24 of certain staff to ADW was allegedly improper, because there
25 were some recommendations in the file of those people that were

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1 contrary to promotion -- in other words, recommended against
2 promotion. And going back to the consent judgment, the consent
3 judgment has very detailed and specific rules about who can be
4 promoted and who can't, and it identifies things that would
5 disqualify people from promotion unless, you know, there's a
6 written explanation of why, you know, an exception should be
7 made, and then I believe it requires that there be consultation
8 with the monitor. When those conditions have been met, we have
9 done that to the letter. You know, there were people who would
10 have been disqualified under the consent judgment and we
11 consulted with the monitor. And I don't know the result,
12 whether they agreed with us the person should be promoted or
13 not, but whatever, there's no dispute or disagreement with the
14 monitor about how those people were handled.

15 All these people, the 12 that have been called into
16 question, there was no reason for us to contact the monitor
17 about them under the consent judgment. There was nothing in
18 the records that would disqualify them from promotion under the
19 consent judgment. The plaintiffs have not said otherwise, nor
20 has the monitor. So the upshot is, is that an agreement was
21 made as to what discretion the commissioner would have in
22 making these promotions, and that agreement should be honored.

23 The commissioner did not ignore the comments made by
24 the people in the various departments at the department. The
25 commissioner has told the plaintiffs that he carefully

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1 considered everything in the file when making these decisions,
2 and nobody has, I don't think -- there's no evidence to put
3 that in dispute. These things were not ignored. But the
4 commissioner has to make determinations as a professional
5 manager of a complex organization and has to consider many,
6 many different factors, including how long ago the problem was,
7 what the person has done since that problem arose, the need to
8 retain and develop talent within the organization, the need to
9 motivate people, the need to meet the expectations of people
10 who are loyal to the department and who do have a good record,
11 even if there are some negative things in it, but who overall
12 have a good record of doing their job with integrity. So the
13 commissioner has to make those hard judgments.

14 Under the consent judgment in these particular
15 instances, that is left to the commissioner's judgment, which
16 we think was exercised appropriately. Those people are on
17 probation. I think it lasts for a year. If they were to act
18 contrary to the rules, to the expectations of their promotion
19 and the rules of the department and the principle and the goal
20 that we're all here to talk about today -- the safety of the
21 inmates; if they were to act contrary to that, then their
22 promotion would be revoked. I believe in some instances it's
23 already occurred. So there's no hesitation to do that.

24 So I don't think it's really appropriate to say that
25 somehow violates our undertakings or the consent judgment and

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1 made those promotions, when it did not. And the current
2 administration of the department has a very good record of
3 taking action when it's necessary to make sure that standards
4 are upheld.

5 Is there anything else your Honor wanted me to address
6 that the plaintiffs had raised?

7 THE COURT: From your perspective, are there
8 recommendations as to which you have been asked for a response
9 or positive/negative reaction that you haven't responded to
10 yet?

11 MR. SCHEINER: Well, your Honor, I think that response
12 has been made to the monitor. In other words, there are
13 discussions -- even just yesterday -- with the monitor.

14 THE COURT: The monitor did mention that there were
15 discussions yesterday.

16 MR. SCHEINER: Right. So that the response, I think,
17 because of the complexity of many of the recommendations, is
18 best made to the monitor. I think the spirit of the
19 recommendations in terms of, you know, what we all want to
20 achieve, we're not saying any of them would not be good, in
21 principle. It's a question of how to achieve them. And so I
22 think -- but I do think that it's appropriate for us to respond
23 to the monitor in the areas where there's some ambiguity or
24 something that, you know, is not relatively obvious and simple,
25 where we've -- you know, we've made the commitments where we

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1 think we can commit to specific dates, and the plaintiffs are
2 aware of those.

3 THE COURT: Thank you.

4 Let me first ask the court reporter -- we've been
5 going for about an hour and 45 minutes -- do you need a break?

6 All right. We will take a ten-minute break and resume
7 at five minutes to four, with the goal of wrapping up within,
8 at the most, 20 minutes after that. So we'll need to be
9 concise.

10 When we come back, I am first going to ask
11 Ms. Friedberg to speak from the monitor's perspective as to the
12 status of the recommendations and whether she believes that
13 there is appropriate engagement going on in the current mode
14 and whether an order is necessary to keep that level of
15 engagement going. And then we will also take up the question
16 of the extension of reporting time that's been requested. And
17 I will tell you all that that -- I think it's a three-week
18 extension in the summer -- seems reasonable and appropriate to
19 me, coming from the monitor, and that my intention would be to
20 set a next conference date in the second week of August. And I
21 have a couple of dates so that you can look in your calendars
22 during the break, August 7, 10th or 11th at two in the
23 afternoon.

24 All right. Let's, we'll reconvene at 4 o'clock.
25 That's easier than three minutes to four. Thank you.

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(Recess)

THE COURT: Good afternoon. Please be seated.

Ms. Friedberg.

MS. FRIEDBERG: Thank you, your Honor.

I'd just like to start with two housekeeping items that I think are helpful contextually for the questions you raised with me.

First, I do understand the city's position with respect to the monitoring team or their view on screening. I just would direct the Court to our April 3 report with respect to our findings on screening. I'm not going to go piece by piece, but I would suggest that the monitoring team's position is quite clear, and that's what should stand with respect to the monitoring team's position versus the city's characterization of our position with respect to screening. So that's item No. 1.

Second, my understanding from right before the end of the Court's break was that the Court is inclined to grant the monitoring team's request with respect to the filing of our next monitor's report to be on July 10, 2023. Should that be true, I just wanted to share the monitoring team's expectations for what will be in that report, because I think that will then help guide some of the answers that you have asked me for.

The monitoring team's report will, of course, address the requirements of the action plan that are enumerated in

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1 section G of the action plan. We also intend to specifically
2 address each one of the recommendations in the April 24 report
3 and the status of those recommendations with respect to how we
4 are working with the department. Just to be clear for all
5 parties that that will be a core focus of that report and the
6 status of those within that July 10 report.

7 THE COURT: And will that report as to the
8 recommendations that it will report on specifically include
9 progresses against the deadline targets that the city has
10 undertaken to comply with.

11 MS. FRIEDBERG: Correct. There are six -- well,
12 technically, there are five recommendations with deadlines that
13 we would be required to address. One of the recommendations
14 with a deadline is actually for the city to provide two reports
15 to the Court, so I will ask them to do that, just to be totally
16 clear.

17 The other five, those are embedded in our
18 recommendations in appendix A of the April 24 report. Each one
19 of those will be addressed, including any of those with respect
20 to their progress on any enumerated deadlines.

21 One final -- I'm sorry. I said there were only two
22 housekeeping items. There's actually a third. Just for
23 clarity's sake, following the issuance of the April 24 report,
24 the monitoring team did identify that there were four
25 recommendations embedded in the narrative of the report but

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1 didn't make it into the chart. A revised chart of
2 recommendations have been provided to all parties. After this
3 hearing we're certainly happy to provide a revised version with
4 you, but just for clarity for what I know are my very, very
5 type A -- in all due respect -- colleagues here, I just want to
6 clarify that our report would intend to address the revised set
7 of recommendations and not just those that are enumerated in
8 the April 24 report, but those that were revised subsequent to
9 the April 24 report. They're not new recommendations. They
10 were in the narrative. They just, simply as an oversight, were
11 not included in the chart.

12 THE COURT: Very good. And I do ask you to provide
13 the revised chart, file it on the record so that we're all
14 clear as to what the reference document is.

15 MS. FRIEDBERG: If it's OK with the Court, would it be
16 OK if we could file it by tomorrow --

17 THE COURT: Yes.

18 MS. FRIEDBERG: -- instead of today?

19 OK. Great. We'll file it by the end of the day
20 tomorrow.

21 THE COURT: Good.

22 MS. FRIEDBERG: I believe you gave me some homework
23 assignments during the break.

24 THE COURT: Yes.

25 MS. FRIEDBERG: The first was with respect to the

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1 status of our discussions of the recommendations with the
2 department. We have engaged with the department with respect
3 to the recommendations. In fact, some of those discussions
4 predated the filing of the April 3 and the April 24 reports on
5 certain discrete areas. For instance, with respect to
6 investigations, as you know, we had had discussions prior to
7 and subsequent to the report.

8 We have had pretty in-depth discussions on certain
9 matters, investigations probably being the highest one. The
10 other, with respect to discipline, I have routine
11 communications with the deputy commissioner of trials, and so
12 we have already started to engage in a more substantive manner
13 how to address the recommendations with respect to discipline.

14 With respect to the overarching level of
15 recommendations, it's a mixed bag. There's over 35
16 recommendations. We have had an opportunity to at least
17 initially engage on each one of them, some in greater depth
18 than others. So that, we had a very helpful conversation
19 yesterday. I believe that there's going to need to be a
20 subsequent, many, many conversations, probably meetings and
21 phone calls to address them, and they sort of vary. Some, as
22 the parties have acknowledged, are very discrete and probably
23 easy to address. Others are actually going to require some
24 back-and-forth with respect to what was the intent of the
25 recommendation and how best can it be addressed.

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1 To date, our engagement with the department since
2 we've submitted the recommendations, both after the April 3
3 report and actually, in fact, after the April 24 report, has
4 been strong. Our view is that to the extent that engagement
5 falters in any way, shape or form, we will not hesitate to
6 advise the Court immediately -- be that even if it is prior to
7 the July 10 report. But at this point, I think the engagement
8 has been where it needs to be with respect to the monitoring
9 team. As I said, I think I've probably spoken with the
10 department every day since the April 3 report with respect to
11 at least some of them, some again in greater detail than
12 others. And as Mr. Martin mentioned, yesterday we had a
13 meeting with the commissioner and all of their high-level
14 executives who walked through kind of what I'd say an initial
15 conversation about all of them. Their position on them varies,
16 and it would be quite laborious to go through them each now,
17 but that engagement has been where I think it needs to be at
18 this juncture.

19 THE COURT: Thank you.

20 In light of that report and corroboration from the
21 monitor that the monitor is pursuing, productively, engagement
22 on the recommendations, including clarification of the more
23 conceptual recommendations with the department, I find it
24 neither necessary nor prudent in terms of the use of resources
25 and increase of particular granular points or argument about

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1 specific compliance or noncompliance to require that anything
2 be embodied in an order at this juncture, and so I am declining
3 to pronounce particular orders today or to require the parties
4 to engage with each other in the formulation of an order or
5 orders embodying the further recommendations.

6 Having said that, I expect to hold the city to the
7 undertakings that it has made in respect of particular
8 requirements, and I will be very unpleasantly surprised if I
9 hear from the monitoring team that the recommendations are not
10 being taken seriously and moving forward at the necessary rapid
11 pace. I understand that the new leadership team has many, many
12 challenges and is working on many different fronts, but this is
13 a very big problem that affects many, many, many people who are
14 not in control of this process. And so it is necessary to make
15 up for lost time and increase the safety and rational and
16 appropriate operation of the institution as soon as possible.
17 And that requires a pace faster than any that we've managed to
18 achieve so far.

19 It is a very good thing that the new staff have been
20 put in place in the new structure, and that is one reason that
21 I believe that it is not only appropriate but reasonable to
22 expect that we will see increasingly improving results on the
23 particular issues that we have been discussing and that are the
24 subject of the recommendations, and it is my hope and my
25 expectation that the data that are provided to the monitoring

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1 team and on which the monitoring team reports will show further
2 improvement. I hope that will be significant.

3 And so now as to the monitoring team's request to
4 modify the reporting schedule set forth in the action plan, the
5 requested extension from June 9 to July 10, 2023, is granted.
6 And I'll just say for the record, so that there is language
7 embodying this order, the request to modify the monitoring
8 team's reporting schedule as set forth in section G, paragraph
9 2(iv) of the action plan is granted. The Court grants the
10 request in order to ensure the most effective and efficient
11 allocation of the monitoring team's resources and to ensure
12 that the reporting schedule provides an adequate opportunity to
13 measure the defendants' progress in implementing meaningful
14 reform pursuant to the action plan, and the Court directs the
15 monitoring team to file additional special reports if necessary
16 should exigent circumstances present themselves, including if
17 defendants fail to remain adequately engaged with the
18 monitoring team and appropriately committed to implementing
19 sustained reform.

20 Right before we broke, I identified three different
21 days in the second week of August. I realize there was a lot
22 happening in ten minutes. Is there any constituency that
23 cannot make it on August 10 at two in the afternoon?

24 All right. We will make the next conference August 10
25 at two in the afternoon.

N4rWnunC

1 Is there anything further that we absolutely need to
2 discuss together this afternoon?

3 Thank you, all.

4 After we adjourn, before we leave the courtroom, check
5 in with the court reporter as to whether there are particular
6 spellings that she will need in order to complete the
7 transcript. And I direct the city to order the transcript,
8 including ordering a copy for the Court, to be provided to me
9 within a week.

10 Thank you, all. And I thank everyone who's come to
11 observe today. Stay safe and keep well.

12 We are adjourned.

13 (Adjourned)